



DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND
1777 HARDEE AVENUE SW
FORT MCPHERSON GEORGIA 30330-1062

REPLY TO
ATTENTION OF

AFLG-PR

12 May 1998

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Contracting Information Letter (CIL) 98-24

1. This CIL contains information on the following:
 - a. Central Contractor Registration,
 - b. Procurement of Natural Gas (Privitization),
 - c. Guidelines for Setting Up and Conducting Information Meetings with Defense Contractors,
 - d. Department of Justice Suit to Block the Lockheed Martin/Northrop Grumman Merger,
 - e. Bundling of Contract requirements,
 - f. Performance Based Service Contracting (PBSC) Contract Review Check List,
 - g. Class Deviation 98-DEV-1 to FAR 32.703 and 37.106 and reporting requirement, on Authority for Severable Service Contracts that Cross Fiscal Years, and
 - h. CMR Lessons Learned.
2. Central Contractor Registration.
 - a. Central Contractor Registration (CCR) is now operational. Contractors/vendors not currently enrolled in the CCR are highly encouraged to enroll immediately. The following statement released by DFAS-HQ is provided to all vendor pay offices to assist in answering any inquiries concerning the CCR:

"Effective April 1, 1998, DFAS will use the data provided in the DOD CCR data base to populate the contract/vendor pay systems. Effective June 1, 1998, contractors will be required to be registered in the DOD CCR data base prior to award of any contract, basic agreement, or blanket purchase agreement, unless

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the award results from a solicitation issued on or before May 31, 1998."

b. Request widest dissemination to contractors/vendors not currently enrolled in the CCR. All accounts payable policy messages are available on the internet at site <http://www.asafm.army.mil/dfas>.

3. Procurement of Natural Gas (Privitization). Mr. John Conklin of SARDA passes along the following Policy Alert:

"It has come to my attention that guidance issued by OACSIM's Center for Public Works (CPW) on this subject (published on their web page and further elucidated in phone consultations) advises the use of a FAR 6.202 Determination and Finding ("Establishing or Maintaining Alternative Sources") when proposing a limited competition to specific types of firms (such as regulated utilities, municipal utilities, etc.) and a J&A only when competition is to be limited to a specific firm or entity. As you know, this is wrong. J&As are required for any restriction of competition, except when restricting the current contracted source to expand the competitive base (see 6.202)."

4. Guidelines for Setting Up and Conducting Information Meetings with Defense Contractors. More and more instances are occurring where senior officials are being asked to meet with contractors for various reasons. At enclosure 1 is a point paper from the FORSCOM SJA Office on this issue. The point paper is provided for your information and use. We recommend you provide to your customers and incorporate into your customer education program. Bottomline: Activities should exercise extreme caution when meeting with contractors to avoid disclosing unauthorized information or making statements or representations that may compromise the government's position on any matter or would provide any firm an unfair competitive advantage. For additional information, please contact Judy Armstrong at DSN 367-5559.

5. Department of Justice Suit to Block the Lockheed Martin/Northrop Grumman Merger.

a. Reference memo, SARD-PC, 24 April 1998, SAB (encl 2).

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b. Subject memo provides guidelines concerning providing information and opinions relevant to the on-going litigation involving efforts by the Department of Justice to block the merger of Lockheed Martin and Northrop Grumman.

6. Bundling of Contract Requirements.

a. The Small Business Reauthorization Act of 1997 (PL 105-135) includes coverage on bundling that makes it more difficult to bundle existing small contracts into a consolidated procurement requirement. Provisions of the Act require the contracting officer to conduct market research, obtain the approval of the higher headquarters, and coordinate with the SBA prior to bundling existing contracts that are currently being performed by small business concerns into a consolidated procurement requirement.

b. If your installation is considering bundling existing small business contracts with commercial activity (CA) functions which are currently performed in-house, you will in all probability have to extend your milestones to allow additional time to comply with these new provisions. Furthermore, if you cannot convince SBA that bundling is a good idea, (which in all likelihood you cannot) expect SBA to appeal your decision to the Secretary of the Army.

c. The provisions of this Act require the contracting officer to give the SBA 30 days notice prior to issuing a solicitation for a bundled procurement requirement. However, we encourage you to involve the SBA in the initial planning stages while the statement of work is being written and before you make a decision to bundle the procurement requirement. The SBA can be of valuable assistance to you in identifying potential small business sources during the market research stage.

d. What is the bottom line? Unless you expect to achieve substantial benefits from bundling, do not bundle. However, if you do decide to bundle, make sure you follow the steps outlined above and, above all, consider the impact that a decision to bundle will have on your milestones.

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e. PL 105-135 was signed into law on 2 December 1997. Its effective date is retroactive to 1 October 1997. DoD has 270 days from the date of enactment to implement the provisions of the Act. An extract of the provisions on bundling is at encl 3. For additional information, please contact Libby Morris at DSN 367-5407.

7. Performance Based Service Contracting (PBSC) Contract Review Check List.

a. Reference memorandum, SARD-PS, 27 March 1998, subject: Performance Based Service Contracting (PBSC) Contract Review Check List (encl 4) is provided for your information. As stated in the memorandum, there will continue to be future quarterly tracking of the statistics. You will be notified by via email regarding future submission dates. The email address for location of the attached charts is <http://acqnet.brtrc.com/acqref/armetric/pbsc.htm>.

b. For additional information, please contact Gail Burrell at DSN 367-6787 or email burrellg@forscom.army.mil.

8. Class Deviation 98-DEV-1 to FAR 32.703 and 37.106 and Reporting Requirement, on Authority for Severable Service Contracts that Cross Fiscal Years.

a. Reference memorandum, SARD-PP, subject: Authority for Severable Service Contracts that Cross Fiscal Years, dated 23 March 1998 (encl 5).

b. Class Deviation to Federal Acquisition Regulation (FAR) 32.703 and 37.106 is available pending revisions to these portions of the regulation. The deviation and authority in the FY98 Defense Authorization Act authorizes contracting officers to enter into contracts for periods that cross fiscal years when the contract period does not exceed one year (without regard to any option to extend the period of the contract).

c. Revisions to Defense Federal Acquisition Regulation Supplement (DFARS) 237.106 are pending and will require departments to submit reports concerning contracts awarded under this authority not later than 15 October of FY 98 and FY 99. Based

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on Draft DFARS Case 97-D328, the report will contain the following information:

(1) The total amount and sources of funds obligated under the authority of FAR 37.106(a), which authorizes expenditure of funds across fiscal years,

(2) The types of services procured under the authority,

(3) When the services were ordered and when they were provided,

(4) The reasons in each case why the authority was used.

d. In order to meet this suspense, it will be necessary for contracting offices to submit the report to HQ FORSCOM not later than 10 October of FY98 and FY99, to the attention of Alan Schantz.

e. Report requirements and revisions to the FORSCOM Federal Acquisition Regulation Supplement will be posted to the FORSCOM web page once final guidance in the DFARS is issued.

f. Point of contact is Judith Blake, DSN 367-7175.

9. CMR Lessons Learned. CMR Good News/Success Stories - Fort Carson, CO:

a. Teaming is working at Fort Carson. Fort Carson DOC recently teamed with the Air Force Academy, Falcon and Peterson Air Force Bases to consolidate several contractual requirements. The partnership identified four requirements for consolidation: Road paving, refuse removal, sports officials and laundry. The Fort Carson DOC was the lead for the roads paving requirement. The paving solicitation was issued utilizing full and open competition and an indefinite delivery, indefinite quantity contract was awarded to a small business concern. Savings are projected to be \$1,000,000 per year and is dependent on the amount of work ordered. For additional information on teaming contact Bill Armstrong, DSN 691-6623.

b. Management Tool. A SAACONS generated report is used to

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manage workload and track status of open purchase requests. The report shows workload by buyer/specialist and the age of the purchase request, i.e., 0-30 days; 31-60 days, etc. This is a handy tool for management of workload and monitoring administrative lead time. For more information contact Harrison Cole, DSN 691-6627.



CHARLES J. GUTA

Colonel, AC

Chief, Contracting Division, DCSL&R

Principal Assistant Responsible

for Contracting

5 Encls
as

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POINT PAPER

AFCG- JA-CL

COL HATTEN/2921

ISSUE: Guidelines for Setting Up and Conducting Information meetings with Defense Contractors

POINTS:

- DECIDING TO MEET WITH A CONTRACTOR. The decision to meet with a contractor must be taken carefully, since pending procurements may result in numerous contractor requests for meetings with senior Defense officials.
- PROCEDURES WHEN A MEETING MAY POTENTIALLY BE APPROVED. If a senior official, especially a general officer, agrees to meet with a contractor, certain precautions are important. The contractor should send a letter, facsimile, or e-mail stating the name of his firm, what he wants to talk about and whether he has any current contracts or intends to submit a proposal on any contracts that require interface with FORSCOM.
- OBTAIN CONTRACTING OFFICER/SJA SUPPORT IF THERE IS A POTENTIAL CONFLICT. If the subject of a meeting appears to deal with an ongoing solicitation or a project prior to its being issued to the general public, refer the contractor to the contracting office responsible for the procurement, and notify the SJA as well.
- ONCE A MEETING IS SCHEDULED. Ensure that the general topic of the discussion is documented.
- MAKE NO COMMITMENTS. Do not say anything that could be construed as committing the government to a particular acquisition strategy or purchase.
- DO NOT OFFER ASSISTANCE. DA personnel cannot advise a business representative that an attempt will be made to influence another person or agency or give preferential treatment to their concern in the award of future contracts.
- OFFER NO ADVICE. Do not offer advice or give direction to the contractor. Contractors may construe suggestions as requests to take action, giving rise to a potential claim against the government.
- ADVANCE PROCUREMENT INFORMATION. Information on acquisition priorities, specifications, source selection criteria, and the like must be released to all prospective contractors at the same time through appropriate channels.
- THE PRIMARY OBJECTIVE IS TO RECEIVE THE INFORMATION. While it is all right to ask questions in the briefing, you should avoid having the contractors send you follow-up information. This is to preclude the meeting from resulting in a contractor's "unsolicited proposal" to the agency.
- PROCUREMENT SANCTIONS. There are both criminal and civil penalties for violations. If during the conduct of a property or services procurement, an officer or employee knowingly and willfully discloses or promises to disclose, directly or indirectly any proprietary or source selection information, shall be imprisoned for not more than 5 years and/or fined (U.S.C., Title 41, 423 (e)). Any person who engages in prohibited conduct shall be subject to the imposition of a civil fine in a civil action (U.S.C., Title 41, 423 (e)).
- AVOID APPEARANCE OF FAVORITISM. If you meet with one contractor on a matter, you should generally give other similarly situated contractors (the competitors) the same opportunity.
- OPEN PROCUREMENTS. Do not meet with contractors about a matter once a solicitation has been released. Contractors should use normal procurement channels while the procurement is pending. If you are part of a specific Source Selection (to include having appointed the Source Selection Authority), do not meet with the prospective contractors at all.

AFCG- JA-CL

ISSUE. Guidelines for Information meetings with Defense Contractors

- **EXISTING CONTRACTS.** Be careful not to direct the contractor to take action beyond the scope of the contract or consent to a change in contract requirements. Additionally, avoid statements that could be used in support of a contractor's position against the government. Such statements could lead to your deposition and testimony as part of litigation.
- **ONGOING INVESTIGATION OR LITIGATION.** Avoid discussing matters that are the subject of current litigation or criminal investigation. Do not meet with contractors involved in suspension or debarment actions.
- **FORMER GOVERNMENT EMPLOYEES.** The law may restrict certain former government employees in their dealings with the government for a limited period of time. They are precluded from selling to the government or representing another in dealing with the government. Your responsibility is to not knowingly deal with those who are violating these rules. Also, acquisition information will not be included in government briefings to former DOD officers or employees based solely on their status as a former officer or employee. For additional specific information, contact your ethics counselor in the legal office.
- **AVOID GRATUITIES.** DOD personnel are precluded from seeking or accepting favors from defense contractors or attempting to induce or coerce any actions other than those authorized by contract or by law. An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per occasion; the value received from anyone person shall not exceed \$50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificate of deposit (5 CFR Part 2635.204 (a)).
- **In Summary,** you should exercise caution during meetings with defense contractors to avoid disclosing unauthorized information or making statements or representations that would compromise the government's position on any matter. Avoid providing any firm an unfair competitive advantage. Be concerned about appearance as well as reality. When in doubt, contact your SJA or Director of Contracting.



REPLY TO
ATTENTION OF

SARD-PC

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH DEVELOPMENT AND ACQUISITION
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

MAY 04 1998

24 APR 1998

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Department of Justice Suit to Block the Lockheed
Martin/Northrop Grumman Merger

The enclosed memorandum from the General Counsel of the Department of Defense (DoD), dated 1 April 1998, SAB, emphasizes that DoD personnel should not provide information or opinions to any outside party that relate to the on-going litigation involving the efforts of the Department of Justice to block the merger of Lockheed Martin/Northrop Grumman, except through the Office of General Counsel and the Department of Justice. You should be aware, however, that this does not cover ordinary contacts with either company related to day-to-day procurement activities. All personnel should have a heightened sense of awareness and exercise reasonable discretion in reporting contacts or discussions that raise questions in their minds.

On behalf of the Secretary of the Army, the Office of the General Counsel of the Department of the Army is the point of contact for matters related to this litigation. Therefore, any contacts from parties outside the DoD that are related to the merger or litigation should be reported to the Office of the Army General Counsel, so that the information can be reported to DoD. Please coordinate with your local legal advisor prior to contacting the point of contact in the Office of the Army General Counsel. The point of contact in the Office of the Army General Counsel is Mr. Frank J. Sando, (703) 697-5120, DSN: 227-5120, sandofj@hqda.army.mil.

Sincerely,

Kenneth J. Oscar
Acting Assistant Secretary of the Army
(Research, Development and Acquisition)

Enclosure

ENCL 2





GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1600 DEFENSE PENTAGON
WASHINGTON, D. C. 20301-1600

1 APR 1998

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Department of Justice Suit to Block the Lockheed Martin/Northrop Grumman
Merger

The Department of Justice has filed suit to block the proposed merger of the Lockheed Martin Corporation and Northrop Grumman Corporation. This action was taken with the full support of the DoD based upon a thorough review of the transaction under Department of Defense Directive 5000.62, dated October 21, 1996. In that regard, I have attached a copy of the letter from Secretary Cohen to the Attorney General outlining the Department's position.

The companies have indicated their intention to oppose vigorously our position in court. It is likely that the parties, their counsel, or even their consultants may contact individuals within your organizations seeking information relating to this litigation. It is important that employees within your organizations understand that information or opinions potentially relating to the litigation should not be provided to any outside party, except through the Office of General Counsel and the Department of Justice. The issues raised by the litigation include: aircraft, electronic warfare, radar, naval and undersea systems sectors, space-related equipment, any contracts performed by Logicon, and any matters related to vertical integration. Employees reviewing Freedom of Information Act requests also should be alert for requests for information potentially related to the litigation.

This memorandum is not intended to cover ordinary contacts with the companies related to on-going procurement activities. Your personnel should, however, have a heightened sense of awareness and exercise reasonable discretion in reporting contacts or discussions that raise questions in their minds.

In order to protect the Department's interests during the litigation, all contacts from outside the Department that are potentially related to the merger or the litigation should be referred immediately to Mr. Harold Kwalwasser (703-697-2715) of my office, or, in his absence, to Mr. Brad Wiegmann (703-695-3392) or Ms. Shauna Russell (703-695-3392).



CORRECTED COPY -
ATTACHMENT NOW INCLUDED

By copy of this memorandum, it is requested that the General Counsel for each Military Department and Defense Agency designate a litigation point of contact to support the Department in matters related to your department or agency that may arise in this litigation.



Judith A. Miller

Attachment:
As stated

cc: General Counsels of the Military Departments and Defense Agencies



THE SECRETARY OF DEFENSE
WASHINGTON, DC 20301-1000

MAR 23 1990

Honorable Janet Reno
Attorney General
Washington, DC 20530

Dear Madam Attorney General:

The Department of Defense has reviewed thoroughly the proposed acquisition of the Northrop Grumman Corporation by the Lockheed Martin Corporation, two of the four largest defense firms in the United States today. This transaction was the most complicated and difficult that we have reviewed to date. No previous merger has raised so many interrelated problems across so many markets. These problems are an outgrowth of the significant consolidation in the defense industry that has taken place in recent years.

We have concluded, for reasons stated below, that this merger creates significant competitive problems for the Department of Defense. Because of the extensive nature of these problems – both horizontal and vertical – we have also concluded that partial solutions addressing individual competitive issues will not be adequate. Accordingly, we believe that this transaction is not in the best interests of this Department.

We have examined carefully the electronics businesses in which these companies compete and have found that the proposed transaction increases market concentration and adversely affects competition in a number of critical areas of defense electronics. These areas include electronic warfare, airborne early warning radar, and naval and undersea warfare.

In addition, the proposed transaction creates unprecedented problems of vertical integration throughout the electronics area. For several years, the Department of Defense has been concerned that increased industry consolidation could have an adverse competitive effect by increasing vertical integration in the defense industry. Increased vertical integration provides incentives for firms either to favor their own in-house systems, even when better or cheaper products are available from competitors, or to withhold critical technologies from platform and system competitors. The potential for competitive problems increases if, as in this case, there are only two viable suppliers for important product areas, and one or both of these suppliers is a vertically-integrated firm. Last year, the Defense Science Board reviewed the issues raised by increased vertical integration and confirmed the Department's concerns about its potentially harmful effects on competition for defense products.

In our judgment, the proposed transaction leads to an unacceptable level of vertical integration that cannot be addressed adequately through behavioral remedies in a consent decree. Combining Lockheed Martin's existing platform and electronics strength with Northrop Grumman's considerable platform and electronics systems capabilities would enhance the new company's ability to make both platforms and key electronic subsystems, and could thereby affect adversely competition at both the platform and subtier level.

Although it might be possible theoretically to address vertical integration concerns by providing key systems to prime contractors as government furnished property, or by requiring prime contractors to conduct full and open competitions for key systems subject to the

ATTACHMENT

Department's review of the selection, the Department determined that, in this case, where vertical concerns are so pervasive, these approaches clearly would provide an unsatisfactory solution. They would require greater and more intrusive Department of Defense management and regulation of decisions that are properly made by private contractors and would, therefore, be contrary to the thrust of our acquisition reform initiatives.

Further, Northrop Grumman has a profitable aircraft business. It is a leader in stealth technology and has very capable and innovative design teams. In addition, Northrop Grumman is an important subcontractor to other aircraft manufacturers. We believe that the proposed transaction reduces the prospect for innovation and the likelihood of alternative competitive teaming arrangements in aircraft programs. We also believe that the Department will benefit from Northrop Grumman's availability to compete for aircraft programs.

Finally, the proposed transaction creates significant conflicts of interest in the context of systems engineering and technical assistance contracts. Northrop Grumman's Logicon division assists the Department of Defense in managing some Lockheed Martin programs, including the Aegis weapon system, and in evaluating Lockheed Martin's performance.

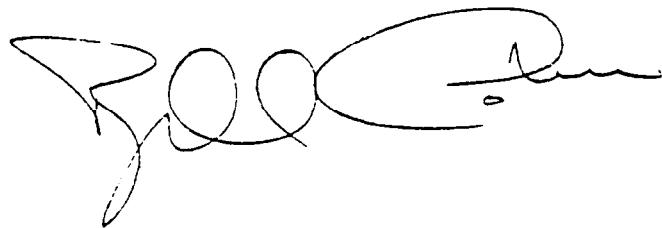
Lockheed Martin asserts that this acquisition would generate significant savings for the Department of Defense. We have considered these savings and have taken them into account in our evaluation of the transaction.

In conclusion, I believe it is important to note that our analysis of this transaction applied the same standards we have used in our reviews of previous mergers and acquisitions in the defense industry. This transaction presented the Department with an unprecedented combination of horizontal and vertical problems. After a very thorough and careful review, we have concluded that the Department's interests would be best served if Lockheed Martin and Northrop Grumman do not merge.

We also believe that additional consolidation within the defense industry may be beneficial to reduce excess capacity and lower costs, and we will support such transactions when they do not adversely affect competition. We will continue to analyze these transactions carefully to ensure that they meet these objectives.

Once again, I note with pleasure the outstanding cooperation that has taken place between the Department of Justice and the Department of Defense during our reviews of this transaction. From our point of view, the public interest continues to be well-served by this process.

Sincerely,

A handwritten signature in black ink, appearing to read "RFK", with a stylized flourish extending to the right.

Subtitle B--Small Business Procurement Opportunities Program

SEC. 411. CONTRACT BUNDLING.

Section 2 of the Small Business Act (15 U.S.C. 631) is amended by adding at the end the following:

(j) CONTRACT BUNDLING- In complying with the statement of congressional policy expressed in subsection (a), relating to fostering the participation of small business concerns in the contracting opportunities of the Government, each Federal agency, to the maximum extent practicable, shall--

(1) comply with congressional intent to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers;

(2) structure its contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; and

(3) avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors.'.

SEC. 412. DEFINITION OF CONTRACT BUNDLING.

Section 3 of the Small Business Act (15 U.S.C. 632) is amended by adding at the end the following:

(o) DEFINITIONS OF BUNDLING OF CONTRACT

REQUIREMENTS AND RELATED TERMS- In this Act:

(1) BUNDLED CONTRACT- The term 'bundled contract' means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements.

(2) BUNDLING OF CONTRACT REQUIREMENTS- The term 'bundling of contract requirements' means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to--

(A) the diversity, size, or specialized nature of the elements of the performance specified;

`(B) the aggregate dollar value of the anticipated award;
`(C) the geographical dispersion of the contract performance sites; or
`(D) any combination of the factors described in subparagraphs (A), (B), and (C).

`(3) SEPARATE SMALLER CONTRACT- The term 'separate smaller contract', with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.'

SEC. 413. ASSESSING PROPOSED CONTRACT BUNDLING.

(a) IN GENERAL- Section 15 of the Small Business Act (15 U.S.C. 644) is amended by inserting after subsection (d) the following:

`(e) PROCUREMENT STRATEGIES; CONTRACT BUNDLING-

`(1) IN GENERAL- To the maximum extent practicable, procurement strategies used by the various agencies having contracting authority shall facilitate the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers.

`(2) MARKET RESEARCH-

`(A) IN GENERAL- Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of an agency shall conduct market research to determine whether consolidation of the requirements is necessary and justified.

`(B) FACTORS- For purposes of subparagraph (A), consolidation of the requirements may be determined as being necessary and justified if, as compared to the benefits that would be derived from contracting to meet those requirements if not consolidated, the Federal Government would derive from the consolidation measurably substantial benefits, including any combination of benefits that, in combination, are measurably substantial. Benefits described in the preceding sentence may include the following:

`(i) Cost savings.

- `(ii) Quality improvements.
- `(iii) Reduction in acquisition cycle times.
- `(iv) Better terms and conditions.
- `(v) Any other benefits.

`(C) REDUCTION OF COSTS NOT DETERMINATIVE-

The reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be consolidated.

`(3) STRATEGY SPECIFICATIONS- If the head of a contracting agency determines that a proposed procurement strategy for a procurement involves a substantial bundling of contract requirements, the proposed procurement strategy shall--

`(A) identify specifically the benefits anticipated to be derived from the bundling of contract requirements;

`(B) set forth an assessment of the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements and specify actions designed to maximize small business participation as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements; and

`(C) include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

`(4) CONTRACT TEAMING- In the case of a solicitation of offers for a bundled contract that is issued by the head of an agency, a small-business concern may submit an offer that provides for use of a particular team of subcontractors for the performance of the contract. The head of the agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors. If a small business concern teams under this paragraph, it

shall not affect its status as a small business concern for any other purpose.'

(b) `ADMINISTRATION REVIEW- Section 15(a) of the Small Business Act (15 U.S.C. 644(a)) is amended in the third sentence--

(1) by inserting `or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration,' after `discrete construction projects,';

(2) by striking `or (4)' and inserting `(4)'; and

(3) by inserting before the period at the end of the sentence the following: `, or (5) why the agency has determined that the bundled contract (as defined in section 3(o)) is necessary and justified'.

(c) RESPONSIBILITIES OF AGENCY SMALL BUSINESS ADVOCATES- Section 15(k) of the Small Business Act (15 U.S.C. 644(k)) is amended--

(1) by redesignating paragraphs (5) through (9) as paragraphs (6) through (10), respectively; and

(2) by inserting after paragraph (4) the following:

`(5) identify proposed solicitations that involve significant bundling of contract requirements, and work with the agency acquisition officials and the Administration to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small businesses as prime contractors, or to facilitate small business participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued;'.

SEC. 414. REPORTING OF BUNDLED CONTRACT OPPORTUNITIES.

(a) DATA COLLECTION REQUIRED- The Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4)(A)) shall be modified to collect data regarding bundling of contract requirements when the contracting officer anticipates that the resulting contract price, including all options, is expected to exceed

\$5,000,000. The data shall reflect a determination made by the contracting officer regarding whether a particular solicitation constitutes a contract bundling.

(b) DEFINITIONS- In this section, the term 'bundling of contract requirements' has the meaning given that term in section 3(o) of the Small Business Act (15 U.S.C. 632(o)) (as added by section 412 of this subtitle).

SEC. 415. EVALUATING SUBCONTRACT PARTICIPATION IN AWARDING CONTRACTS.

Section 8(d)(4) of the Small Business Act (15 U.S.C. 637(d)(4)) is amended by adding at the end the following:

`(G) The following factors shall be designated by the Federal agency as significant factors for purposes of evaluating offers for a bundled contract where the head of the agency determines that the contract offers a significant opportunity for subcontracting:

`(i) A factor that is based on the rate provided under the subcontracting plan for small business participation in the performance of the contract.

`(ii) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.'

SEC. 416. IMPROVED NOTICE OF SUBCONTRACTING OPPORTUNITIES.

(a) USE OF THE COMMERCE BUSINESS DAILY AUTHORIZED- Section 8 of the Small Business Act (15 U.S.C. 637) is amended by adding at the end the following:

`(k) NOTICES OF SUBCONTRACTING OPPORTUNITIES-

`(1) IN GENERAL- Notices of subcontracting opportunities may be submitted for publication in the Commerce Business Daily by--

`(A) a business concern awarded a contract by an executive agency subject to subsection (e)(1)(C); and

`(B) a business concern that is a subcontractor or supplier (at any tier) to

such contractor having a subcontracting opportunity in excess of \$10,000.

` (2) CONTENT OF NOTICE- The notice of a subcontracting opportunity shall include--

` (A) a description of the business opportunity that is comparable to the description specified in paragraphs (1), (2), (3), and (4) of subsection (f); and

` (B) the due date for receipt of offers.'.

(b) REGULATIONS REQUIRED- The Federal Acquisition Regulation shall be amended to provide uniform implementation of the amendments made by this section.

(c) CONFORMING AMENDMENT- Section 8(e)(1)(C) of the Small Business Act (15 U.S.C. 637(e)(1)(C)) is amended by striking '\$25,000' each place that term appears and inserting '\$100,000'.

SEC. 417. DEADLINES FOR ISSUANCE OF REGULATIONS.

(a) PROPOSED REGULATIONS- Proposed amendments to the Federal Acquisition Regulation or proposed Small Business Administration regulations under this subtitle and the amendments made by this subtitle shall be published not later than 120 days after the date of enactment of this Act for the purpose of obtaining public comment pursuant to section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b), or chapter 5 of title 5, United States Code, as appropriate. The public shall be afforded not less than 60 days to submit comments.

(b) FINAL REGULATIONS- Final regulations shall be published not later than 270 days after the date of enactment of this Act. The effective date for such final regulations shall be not less than 30 days after the date of publication.

APR 06 1998



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH DEVELOPMENT AND ACQUISITION
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

REPLY TO
ATTENTION OF

27 MAR 1998

SARD-PS

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Performance-Based Service Contracting (PBSC) Contract
Review Check List

Reference the following:

- a. Acting DASA(P) memorandum of May 23, 1997, subject as above.
- b. Acting DASA(P) memorandum of August 27, 1997, subject as above.
- c. OFPP memorandum of February 27, 1998, entitled, PBSC Pilot Project.
- d. Acting DASA(P) memorandum of March 23, 1998, entitled, PBSC Pilot Project.

In references a and b, I asked you to review and classify all newly awarded service contracts with a total estimated value of \$250,000 or greater as PBSC, Partially-PBSC, or Non-PBSC. These memorandums also required you to characterize these efforts as fixed price or non-fixed price. This data was due 30 days after the close of the respective quarter and included contract awards through the 1st quarter of fiscal year (FY) 1998.

The composite data for the 2nd through 4th quarters of FY 97 and the 1st quarter of FY 98 indicate that 61 percent of these service contracts and 69 percent of our service contract dollars were either PBSC or P-PBSC. This data is provided as an attachment to this memorandum and will be available on our web site. Furthermore, our most recent data indicates that approximately 65 percent of our combined PBSC and P-PBSC contract awards and 55 percent of our service contracts are fixed-price type efforts. I appreciate the effort that everyone has expended on this endeavor to date.

While I continue to be encouraged by the results of the preceding four quarters, I know we can substantially improve our PBSC usage rate. The preliminary results of OFPP's pilot project indicate that, when fully and properly applied, PBSC enables us to simultaneously obtain significantly improved

ENCL 4



contract performance at reduced prices. These results are particularly noteworthy when non-PBSC cost type efforts are converted to fixed price type PBSC efforts. This program also dovetails nicely with our goal of managing for results, not process. Evidence is accumulating however that application of only selected aspects of the total PBSC methodology is not likely to be nearly as fruitful, and may even diminish the value of services provided. Accordingly, you are encouraged to use total PBSC methods whenever possible.

I request that you continue to review and classify all newly awarded service contracts with a total estimated value of \$250,000 or greater and provide me the results of your analysis. Contracts for construction, utilities, A-E, and R&D remain excluded from this analysis and classification. I've again included our PBSC checklist in order to assist you in this effort. This analysis should continue to be accomplished by your Competition Advocates, rolled up by MACOM and be provided to us quarterly on a FY basis. Fixed price and non-fixed price contract classification continues to be required. The quarterly submissions are due 30 days after the close of the respective quarter.

I continue to encourage you to: 1. Promote PBSC to the maximum extent practicable within your command; 2. Include PBSC in your acquisition training programs; and 3. Share PBSC methods, solicitations, and lessons learned via your Internet Homepages. POC for this action is Robert Friedrich, SARD-PS, phone (703) 681-7577 or DSN 761-7577, fax DSN 761-7580, e-mail, friedrir@sarda.army.mil.



Edward G. Elgart
Acting Deputy Assistant Secretary of the
Army (Procurement)

Attachments

DISTRIBUTION:

HQ, U.S. Army Materiel Command, ATTN: AMCRDA-AC (PARC),
5001 Eisenhower Avenue, Alexandria, VA 22333-0001
Deputy Director, Defense Supply Service – Washington, 5200 Army
Pentagon, Washington, D.C. 20310-5200

**Performance-Based Service Contracting (PBSC)
Contract Review Check List**

PBSC Requirements:

1. (M) SOW contains objective, mission-related performance output requirements.
2. (M) SOW contains measurable, mission-related performance quality standards
3. (H) Contract contains positive and negative incentives (i.e., deduction schedules) based on Quality Assurance (QA) measurements.
4. (H) Commercial/industry-wide performance standards are relied upon where possible.
5. (M) Contract is not a term type.
6. (M) Use experience gained from recurring requirements to convert them to performance-based requirements.
7. (H) Contract is fixed-price.
8. (H) Marketplace and stakeholders are provided the opportunity to comment on draft performance requirements and standards, QA plan and incentives via draft solicitations and government/industry forums.
9. (M) Historic workload analysis is generated to aid in determining scope of requirement, or is estimated if not available.

Requirements that are not PBSC per se, but can “make or break” the effectiveness of PBSC:

1. (H) Contract award is competitive.
2. (H) Best value evaluation/selection is used.
3. (H) Informal conflict resolution methods are available (e.g., ADR, ombudsman).
4. (M) Contract contains government quality assurance (QA) plan to measure performance vs. standards.
5. (H) Multiyear authority is used if available.

All of the above requirements also apply to individual task orders issued under a task order contract and individual projects and/or responsibilities assigned under a major site management contract.

(M) Mandatory

(H) Highly desirable

Dollar Value of PBSC, Partial-PBSC and Non-PBSC Contracts Awarded 2-4th Qtr FY 97 & 1st Qtr FY 98

NON-PBSC DOLLARS

\$1,963.89

31%

\$2,336.51

36%

PBSC DOLLARS

\$2,166.19

33%

PARTIAL PBSC DOLLARS

* All dollars in millions

**Number of PBSC, Partially-PBSC and Non-PBSC Contracts
Awarded 2-4th Qtr FY 97 & 1st Qtr FY 98**

NON-PBSC CONTRACTS

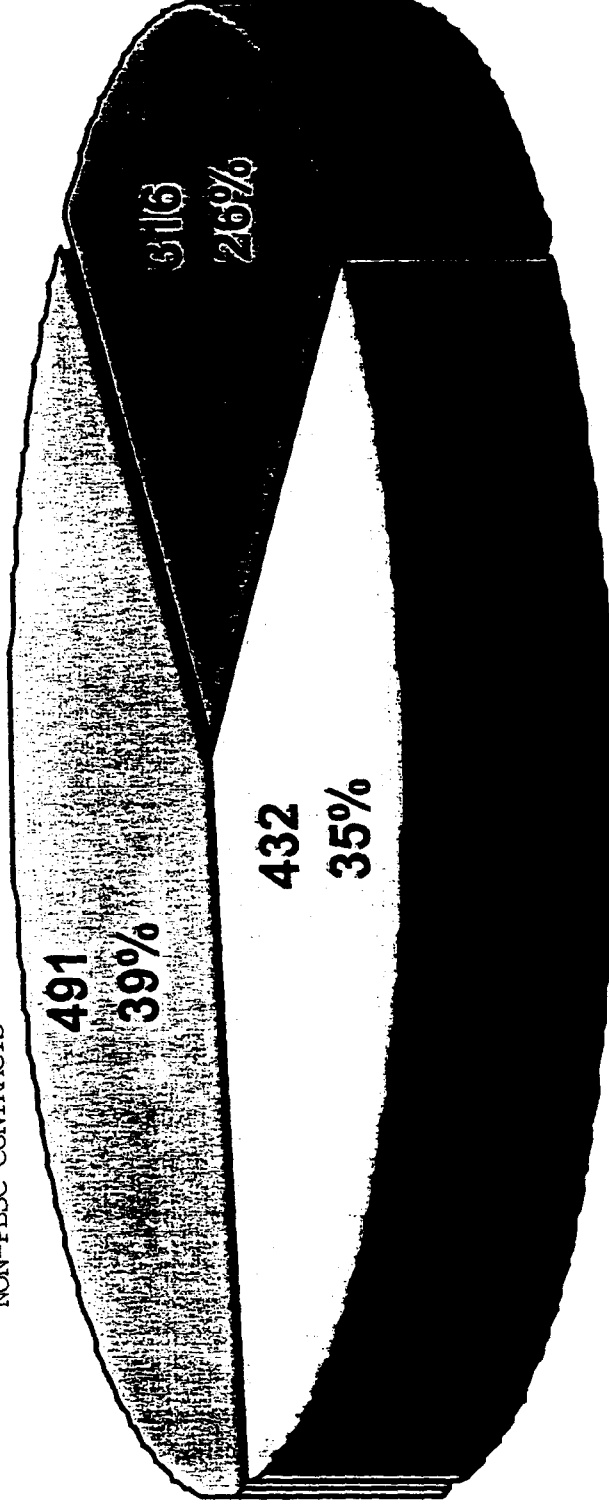
**491
39%**

**432
35%**

PBSC CONTRACTS

**316
26%**

PARTIAL PBSC CONTRACTS





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REPLY TO
ATTENTION OF

SARD-PP

MEMORANDUM FOR SEE DISTRIBUTION


SUBJECT: Authority for Severable Service Contracts that Cross Fiscal Years

Section 801 of the FY98 Defense Authorization Act authorizes contracts for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year. **Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority (see 37.106(b)).**

The Defense Acquisition Regulations (DAR) Council has drafted language which amends FAR 32.703 and 37.106 to implement this change. Also revisions to DFARS 237.106 will require departments and agencies to submit reports not later than 15 days after the end of both fiscal years 1998 and 1999 concerning contracts awarded under this authority.

I hereby grant a class deviation to FAR 32.703 and 37.106, authorizing contracting officers to enter into contracts for periods that cross fiscal years if (without regard to any option to extend the period of the contract) the contract period does not exceed one year. This class deviation is effective immediately, is assigned number 98-DEV-1, and is available for use until such time as the FAR and DFARS changes become effective.

Point of contact for this action is Mrs. Esther Morse, DSN 761-1040.


for Edward G. Elgart
Acting Deputy Assistant Secretary of the
Army (Procurement)

